IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1207 OF 2004

KHWAZA BABASAHAB CHAUDHARY)

residing behind Gaikwad's Office,)

Chinchpada, Ambernath (W))

At present in central prison, Pune.) .. PETITIONER

VERSUS

1. SHRI S. CHAKRAVARTY)

Commissioner of Police, Thane)

2. THE STATE OF MAHARASHTRA)

3. THE SUPERINTENDENT,)

Yerwada Central Prison, Pune.) .. RESPONDENTS

Shri U. N. Tripathi for petitioner

Shri D.S. Mhaispurkar, APP for respondents

CORAM:-SMT. RANJANA DESAI &

A.S. OKA, JJ.

DATED:-15/16-09-2004

ORAL JUDGMENT:-(Per Smt. Ranjana Desai, J.)

In this petition the petitioner ("the detenu" for convenience) has challenged order dated 25.4.04 issued by the Commissioner of Police, Thane under sub-Section (1) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act,1981 ("the said Act" for short).

2. The order of detention rests on one C.R. being C. R. No.I 33/2004 under Sections 143, 147, 148, 149, 324, 504, 506 of the I..P.C. Registered on 5.2.2004 and two incamera statements of witnesses A and B recorded pursuant to an anonymous application dated 24.3.2004 by some

citizen of Ambernath addressed to Police Inspector, Ambernath Police Station complaining about the detenu's prejudicial activities.

3. We have heard Mr. Tripathi, the learned counsel appearing for the petitioner and the learned APP.

4. Mr. Tripathi assailed the impugned order on two grounds. He contended that in the first ground there is a reference to assault on one Iqbal Razaq Momin. The detaining authority has furnished a copy of the medical certificate of the said Iqbal Razaq Momin along with its Marathi translation. The learned counsel contended that the Marathi translation is not a true and correct translation and, therefore, there is a violation of the detenu's right under Article 22(5) of the Constitution of India.

5. Mr. Tripathi contended that Article 22(5) is in two parts. Under the first part a duty is cast on the detaining authority to communicate to the detenu the grounds of detention as soon as possible. Under the second part the grounds have to be supplied to the detenu so as to afford him the earliest opportunity of making a representation against the order of detention. Mr. Tripathi contended that the duty cast on the detaining authority to supply the documents is absolute. Whether the detenu makes

a representation or not is immaterial. The grounds must be supplied to the detenu as soon as possible. Mr. Tripathi also contended that the wrong translation would amount to non-communication of grounds of detention. In this connection the learned counsel relied on **Shri Brijbihari Shivdarshan Shukla v. Shri R.H. Mendonca, Commissioner of Police, Thane & Others, 1998 (1) B.C.R. 144.**

6. The learned counsel then contended that medico legal documents are vital documents and non-supply thereof would vitiate the order of detention. In this connection he relied on the decision of this court in **Vilas @ Harison Tatoba Ghag v. The State of Maharashtra & Ors., Criminal Writ Petition No. 410 of 1988 decided on 6th of June, 1988.** Mr. Tripathi also relied on **Shekhar Shantaram Pawaskar v. V.K. Saraf & Ors., 1990 Cri. L.J. 138, Mohammed Rafique Abdul Majid v. Shri R.H. Mendonca & Ors., 1990 All MR (Cri.) 1633, a decision of this court in Rajesh Satyanarayan Mishra v. Mr. R. H. Mendonca, Commissioner of Police, Greater Mumbai & Ors., Criminal Writ Petition No. 488/1999, decided on 12th of January, 2000., Dinesh Sham Jadhav v. Mr. M.N. Singh & Ors., Criminal Writ Petition No. 1659 of 2001, decided on 7th February, 2002.**

7. Drawing our attention to the translation, the learned counsel contended that there are gross mistakes in the translation which have misled the detenu. In the circumstances, in view of the judgments of this court, the order of detention be set aside.

8. The learned A.P.P. On the other hand contended that the errors in translation are minor errors. It cannot, therefore, be said that the detenu was in any way prejudiced or that his right to make an effective representation was violated. He drew our attention to the affidavit of the detaining authority and contended that in view of the explanation offered therein this court should reject the submission of Mr.Tripathi.

9. Before we deal with this submission of Mr. Tripathi it is necessary to see what are the alleged errors in translation. We find from the translated copies that while two of the injuries i.e. injuries at Serial Nos. 4 and 5 are contusions, they have been described in the translated version as “abrasion”. Secondly whereas the date of issuance of this certificate is given as 1/3/2004 in the English version, in the Marathi

version it is given as “27.2.2004” and thirdly there is slight error in the measurement of the 2nd injury. While in the English version the 2nd injury measures as 5 X 4 X 3 in size, in the Marathi version it is described as 4 X 4 X 3 in size. Mr.Tripathi contended that these are major errors. We are unable to agree with the learned counsel.

10. It is significant to note that though there is a mistake in the translation about the date of issuance of the certificate, it is correctly conveyed to the detenu that Iqbal Razaq Momin aged about 19 years, resident of Woolen Chawl, Surpkarna Apt., Dist. Thane was brought by Police Constable on 5.2.2004 at 5-45 p.m. to the hospital. The part of the body on which the injuries were inflicted, the nature of injuries, the kind of weapon used and the age of injury has been correctly translated. Slight variation in the measurement of the 2nd injury, in our opinion, cannot be called a gross mistake. Similarly description of contusion as abrasion can also not be called a major mistake. When all other columns are correctly translated, we fail to understand how this minor mistake can affect the detenu's right of making an effective representation.

11. It is also significant to note that in the grounds of detention it is stated that the detenu and his associates assaulted the complainant and the

witnesses with hockey-sticks, sticks and fist blows and caused them injuries. There are six other injured persons whose certificates along with their correct translation in Marathi have been supplied to the detenu.

12. It must also be noted that sofar as Iqbal Razaq Momin is concerned, it is not the detenu who is said to have assaulted him but the detenu's associate has assaulted him. In any case from the material supplied to the detenu in connection with this offence, the nature of this offence, its time, its manner of commission have been correctly communicated to the detenu. In our opinion, the translated version is not diametrically opposed to the original certificate. We are, therefore, unable to come to a conclusion that there is any violation of the detenu's right of making representation under Article 22 (5) of the Constitution of India.

13. In this connection it will be useful to refer to a decision of this court in **Nandkumar alias Nandu v. S. Ramamurthi, Commissioner of Police, Greater Bombay & Ors., 1992 Cri. L.J. 1078.** In that case also the court was concerned with a similar question. There were discrepancies between original documents in English relied upon by the detaining authority and their translation in Marathi supplied to the detenu. On the facts in that case the court found the discrepancies to be insignificant,

inconsequential and innocuous. It appears that though there were large number of discrepancies, the court observed that such discrepancies which are insignificant, inconsequential and innocuous though large in number cannot affect the right of the detenu to make an effective representation. We are of the view that the ratio of this judgment is applicable to the facts of this case.

14. Mr. Tripathi is right in contending that the obligation cast on the detaining authority under Article 22(5) of the Constitution of India is absolute. The grounds on which the order of detention is passed must be communicated to the detenu. The grounds in the eyes of law would also include material in support thereof and, therefore, the material on which reliance is placed by the detaining authority must also be supplied to the detenu. Whether the detenu makes a representation or not is immaterial. This proposition has been laid down by this court in **Brijbihari's case (supra)** and on this there can be hardly any debate. The question is whether minor discrepancies in translation would violate the detenu's right under Article 22(5) of the Constitution of India. In view of **Nandkumar"s case (supra)** it is not really necessary to dwell on this point any longer. However, Mr. Tripathi has cited several judgments which we must deal with.

15. That in the facts of a particular case medico legal documents are vital documents can also not be disputed. In **Vilas Ghag's case (supra)** out of five medical certificates translation of only one certificate was supplied to the detenu. In the circumstances this court observed that it cannot be denied that the medical certificates were vital documents and that is why copies of the same were furnished to the detenu. The court found fault with the detaining authority because he had not supplied translations of four medical certificates to the detenu. Since in this case the translations have been supplied to the detenu the judgment in **Vilas Ghags's case (supra)** will have no application to it.

16. In **Dinesh Jadhav's case (supra)** there was a reference to the injuries pertaining to Mehaboob Shaikh in the grounds of detention. Its Marathi translation wasnot supplied to the detenu. Hence this court held that there was a violation of the detenu's right under Article 22 (5) of the Constitution of India. Such are not the facts here. Hence Dinesh Jadhav's case (supra) also will not be useful to advance the contention that detenu's right under Article 22(5) of the Constitution of India is violated in this case.

17. In **Shekhar Pawaskar's case (supra)**, this court was concerned with the Marathi translation of injury certificate. The injury described in the English medical certificate was “CLW 6 cm x ½ cm over scalp left side skin deep”. The same injury in the Marathi translation was described as “6” x 1/2” on the left side knee”. Besides a large portion which was found in the English translation was completely missing in the Marathi translation. We feel that in that case the measurements of the injury were not only incorrect but were likely to mislead the detenu. Centimeters were converted into inches and the large portion of the English version was not translated at all. It is against this background that this court held that the detenu's right to make a representation was violated.

18. In **Rajesh Satyanarayan Mishra's case (supra)** the detenu was not supplied with translations of certain documents. The learned APP conceded that the translations were not faithful. The court after recording the APP's statement observed “In such a factual matrix we find merit in ground 5(x) and feel that the impugned detention order is vitiated because the detenu could not make an effective representation under Article 22(5)

of the Constitution of India". This is a judgment on concession. In our opinion the detenu cannot rely on this judgment.

19. In **Mohammed Rafique's case (supra)** the original injury report which was in English mentioned description of the injury as superficial CLW (L) frontal region above hair line, about 1 cm x 2 cm x 5 cm deep. In the Hindi translation of the said Injury report the following was missing (a) Superficial (b) C.L.W. And © I cm. x 2 cm x 5 cm. Deep. In view of this vital omission, the court held that there was violation of the detenu's right to make an effective representation. In our opinion, ratio of this judgments is not attracted to this case as the facts materially differ.

20. We have already noted that in this case, we find the errors in translation to be totally inconsequential and innocuous. In the light of the above judgments, we feel that a total non supply of a translation of a medical certificate in a given case may amount to violation of the detenu's right under article 22 (5) of the Constitution of India. In a given case, if a vital portion of the injury certificate is not translated at all or omitted it may be a violation of detenu's right under Article 22 (5) of the Constitution of India. In yet another case if a vital portion is wrongly translated that may again be a case of violation of detenu's right to make

an effective representation under Article 22(5) of Constitution of India. However, if there are minor mistakes in translation that will not amount to violation of detenu's right under Article 22 (5) of the Constitution of India. It all depends on the facts and circumstances of each case. We feel that in this case the mistakes are inconsequential. The first submission of Mr. Tripathi must fail.

21. Mr. Tripathi then urged that the detenu has been supplied with copies of in-camera statements of witnesses A and B. At the end of the statement supplied to the detenu it is merely noted that Assistant Commissioner of Police, Ambernath has verified the statements but the name of the officer before whom the statements were recorded has not been given. That has prejudiced the detenu. Incomplete statements have been supplied to the detenu. On this ground urges Mr. Tripathi, the order of detention should be set aside.

22. We are unable to agree with the learned counsel. In the grounds of detention the detaining authority has clearly stated that since the allegations contained in the application were serious, on receipt of the application Senior Inspector of Police, Ambernath Police Station conducted the confidential enquiry into the detenu's criminal activity. It transpired that a number of people had suffered at the hands of the detenu.

However, since the detenu had created a reign of terror nobody came forward to complain against him. It is further stated that Senior Inspector of Police,Ambernath Police Station, therefore, took them in confidence and assured them that their identity would be kept secret and that they would not be called upon to give evidence against the detenu in any court or in any forum. On this assurance some confidence was instilled amongst them and two witnesses agreed to give their statements. Their statements were recorded in camera. In our opinion, it is amply clear from this averment that it is Senior Inspector of Police, Ambernath, who had recorded the statements and the detenu was made aware about this fact. This submission of Mr. Tripathi must also, therefore, fail. No other submissions were made by him.

23. In the circumstances, the petition is dismissed.

24. Authorities to act on authenticated copy of this order.

(SMT. RANJANA DESAI, J.)

(A. S. OKA)